



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

03 MAY 2006

Roger Hansen  
State Conservationist  
USDA-Natural Resources Conservation Service  
Parkade Center, Suite 250, 601 Business Loop 70 West  
Columbia, Missouri 65203

Dear Mr. Hansen:

RE: Review of Draft Environmental Impact Statement for East Locust Creek  
Watershed Revised Plan-Draft Environmental Impact Statement

In accordance with our responsibilities under Section 309 of the Clean Air Act and the National Environmental Policy Act (NEPA), the Environmental Protection Agency (EPA) has reviewed the above referenced Draft Environmental Impact Statement (DEIS). This DEIS was assigned a Council on Environmental Quality (CEQ) file number 20060085. Based upon our review, we have rated the DEIS as "EC-2" (Environmental Concerns-Insufficient Information). EPA's rating definitions are attached to provide additional information on the meaning of this rating. Specific issues that compel EPA's rating include wetlands, streams (impacts assessment and mitigation), and "social and cultural" impacts. Please refer to our detailed comments (attached) for discussion of our specific concerns and recommendations.

Thank you for the opportunity to review this document. If you have any questions about these comments, please contact Stephen K. Smith at (913) 551-7656, or Joseph Cothorn at (913) 551-7148.

Sincerely,

A handwritten signature in black ink, appearing to read "U. Gale Hutton".

U. Gale Hutton  
Director  
Environmental Services Division

## East Locust Creek Draft Environmental Impact Statement Detailed Comments, USEPA Region 7

### **Wetlands Impacts:**

Page 67, Alternative 3 – Table H (page 66) indicates that the project is expected to adversely affect 3 major wetland classes (i.e., emergent, forested and scrub shrub) with as many as four different water regimes. The DEIS proposes that Alternative 3 will result in no net loss of wetlands by virtue of the creation of wetlands along the shoreline and in other shallow portions of the permanent pool as well as within the temporary pool. The DEIS provides no additional information (e.g., page 94, Wetlands) to suggest whether and how such mitigation or replacement wetlands will be created (excavation, planting, monitoring, success measures, etc.). Nor does the DEIS provide important details inherent to the mitigation process.

We believe that attention to such details about mitigation needs to include a number of key issues. First, experience with reservoir systems indicates that any wetland development often favors emergent and scrub-shrub wetlands. Based on current impacts information for the project, these wetland types at best would only offset approximately 43% of the total wetland anticipated impacts if one were to pursue replacement of wetland types in-kind. EPA strongly supports in-kind replacement where it is practicable. EPA believes that determining the practicability of such in-kind mitigation compels the project sponsors to adopt a watershed approach. We believe that an examination of the East Locust Creek watershed could reveal significant opportunities for restoring wetland types lost as a result of the proposed project. As an example, with approximately 58% of the mitigation demand focused on forested wetlands, and with the potential for riparian areas (i.e., profiled well on page 64, Alternative 3) to support wetlands, we believe that an opportunity exists in the EIS to address other wetland mitigation opportunities in the watershed. Such areas would go a long way toward helping to provide habitat and filtering water to ensure protection of water quality in the reservoir.

A second mitigation issue pertains to the feasibility of creating a sufficient amount of wetlands within the temporary pool. Water fluctuations in the reservoir and instability for wetland plant communities resulting from wave action would be expected to compromise the long-term success of such communities.

A third mitigation issue focuses on the long-term protection of wetlands developed in the shallow portion of the permanent pool. Conventional reservoirs that have reached the end of their design life often are plagued by sedimentation. Reservoir life often is extended by excavating to restore reservoir capacity. However, this practice adversely impacts those very wetlands that have developed in the permanent pool of the reservoir. The DEIS indicates that the proposed project will include five sediment/debris basins (page 1, Description of Recommended Plan). However, it is unclear from the DEIS what the relationship will be between the mitigation wetlands and the sediment basins and whether the mitigation wetlands would be affected by future sediment management.

We recommend that the final EIS address the above mitigation issues in full, including legal measures (e.g., conservation easement) for wetlands protection. A clearer picture of the expected mitigation from this project should be addressed, including in the "Wetlands" section of the Recommended Plan (page 94).

Page 70, Alternatives 1, 2, and 3 – This section indicates that 443 acres of wetlands will be converted, whereas Table H (page 66) indicates 290.9 acres. We do recall earlier discussions with the project sponsor and NRCS regarding the likely elimination under the project of a site currently managed under a USDA Wetlands Reserve Program (WRP) contract and easement. Although this WRP wetland acreage may explain the differences in reported wetland acreage, we are not sure, because impacts to the WRP wetland apparently were not addressed in the DEIS. Thus, we recommend that the discrepant impact numbers need to be rectified in the final EIS, and we believe that the EIS is the appropriate place to bring forth all available information related to the fate of the WRP wetland.

Page 77, Table 1 – The DEIS is silent on how mitigation acreage targets were determined. Throughout the document, we learn that wetland losses could be as high as 290.9 acres, but that existing wetlands adjoining East Locust Creek were determined to be of low quality as a result of livestock usage and a declining hydrology (i.e., from an incising stream channel). Proposed wetlands would be created within the permanent and temporary pools of the reservoir to produce a minimum of  $178.5 + 63$  or a total of 241.5 acres. This does not account for 49.4 acres of lost wetlands. Thus, the DEIS provides no explanation or justification for not achieving the no net loss goal which would assume a mitigation target of at least 290.9 acres wetlands using a 1 (acre restored):1 (acre impacted) mitigation ratio. We recommend that the final EIS support its proposed mitigation targets.

### **Cultural Resources and Social Impacts:**

Page 10 and page 71, "Cultural Resources": In both sections, it appears that there will be some impact to cultural resources, but this potential impact is not clearly explained. The DEIS mentions that 7 cultural resources have previously been identified, and that it is likely that these will be impacted. Additionally, a cultural resources survey (planned for 2006) is being performed to identify additional resources. EPA suggests that the Final EIS list and briefly describe the 7 known to be impacted by the project, and what the impact is likely to be, and to provide discussion of how other resources will be managed, if discovered. The town of Boynton (which may or may not be one of the 7 previously identified) should be similarly described. Ideally, the cultural resources survey scheduled for 2006 will be completed in time to include its results in the Final EIS.

Population Relocations and social impacts: There is no data describing the relocations that will be necessary to construct the project (though your statement that any relocations will be properly compensated, on page iv is acknowledged). This will likely include persons living in the town of Boynton as well as rural farmsteads within the footprint of the reservoir. EPA suggests that an additional chapter or section be added to the Final EIS (titled "Social Impacts," "Relocations," or something similar) that identifies the required relocations. There may well be other impacts to

local residents that are not currently described (significant changes to emergency services, for instance) that can be included in such a section.

Page 72, “Civil Rights Impact Analysis”: Presumably this section is included to address concerns as required under Executive Order 12989, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” or “Environmental Justice.” Executive Order 12989 exists in order to insure that no population subcategory is being disproportionately impacted by federal actions. However, there are no data presented describing the project’s impacts to populations (minority, low-income, special needs, or otherwise; note that population data on pages 1-2, as well as 17-18, describe populations throughout the two counties affected, but do not describe those directly impacted by the project), so it is impossible to gauge whether disproportionate impacts to any of these populations are anticipated.

EPA suggests that such analysis be performed and added to the “Civil Rights Analysis” Section. Note that the raw data for this analysis should be included in the “Relocations” section, as recommended, above. Additional information related to “Environmental Justice” can be found at <http://www.epa.gov/compliance/environmentaljustice/>. You can also contact EPA Region 7’s Environmental Justice Office for additional assistance at (913) 551-7649.

#### **Additional Comments:**

Page 23, Water Quality, paragraph 2 – The DEIS indicates that on-site septic systems in close proximity to the proposed reservoir “pose a risk for discharge of untreated effluent.” Although such discharge could pose a risk to a reservoir that would be serving to provide drinking water and full body contact recreational opportunities, it is unclear whether this risk is specifically known to exist and how significant it is. Further, the Recommended Plan (page 83, Land Use and Treatment, paragraph 2) suggests no actions or efforts that will be expended to deal with this risk. We recommend that the final EIS elaborate on whether the project sponsors have any responsibility for and/or plans to deal with this potential issue as part of the project.

Page 51, Table F-3 – The DEIS contains apparently conflicting information regarding the benefit-cost (B-C) ratio associated with the preferred alternative (i.e., #3). Table F-3 indicates a B-C ratio of 1.81:1, whereas the “Recommended Plan,” as described on page 83 in the Summary indicates a B-C ratio of 1.75:1. The correct ratio needs to be provided consistently throughout the final EIS.

Page 58, paragraph 1 – This paragraph discusses the reduction of overbank sediment deposition, scour erosion, etc. but doesn’t attribute such reduction to anything. We are wondering if this could be resolved by reformatting the paragraph to include the last sentence of the previous paragraph.

Page 67, Wildlife Habitat, Existing Conditions – This section directs the reader to the Biology Section of Appendix E for supporting information related to the determination of wildlife habitat units. A search of Appendix E revealed no such information. We recommend that the referenced information be added to Appendix E.

Page 69, Alternative 3 – This alternative indicates here and throughout the document (e.g., page 68, Alternative 3) that 1,605 acres situated around the multi-purpose reservoir will serve as mitigation for natural resources, including bottomland hardwoods. Because bottomland hardwoods could constitute approximately 167 acres of forested wetlands (see Table H, page 66) we are concerned that the planning effort to date has not focused any wetland mitigation targeting in the broader watershed (page 94, Wetlands).

Page 83, Measures to Be Installed – The title of this section implies that definite steps are planned to be taken. However, the supporting text is not definitive. For example, under “Land Use and Treatment,” paragraph 2, it is explained that soil erosion, sediment damages, etc. “can be reduced” through education and implementation of conservation practices. We recommend that the final EIS stipulate what specific measures could, or will, be pursued.

Page 93, bullet 10 – “Full credit for the compensation acres” should be clarified to show applicability to upland impacts mitigation and not mitigation for those stream and wetland impacts regulated under Section 404 of the Clean Water Act.

Page 93, final paragraph – This narrative indicates that stream mitigation will be addressed through the permitting process. EPA is very concerned that this proposed timeframe will be too late in the implementation of the entire project. Options for mitigation often are driven by available land and funding and historically were addressed as an afterthought to already approved and planned projects. Planning and targeting mitigation for 29 miles of stream channel lost to the proposed project should not be delayed until a separate 404 process is initiated by submittal of a 404 permit application. We believe that all mitigation options should be addressed early and, as fully as planning for such mitigation will allow, considered in the overall project costs.

Except for general discussion in the DEIS about the potential to “protect and restore aquatic and riparian areas (e.g., page 64, Alternative 3), no specific stream system restoration ideas have been advanced. The DEIS does provide valuable information to support the opportunity for such restoration (page 61, Stream Resources, Existing Conditions) by noting the condition of specific reaches of East Locust Creek (Creek) (e.g., scouring, channelization, low water crossings, sedimentation). We believe that in-channel mitigation measures, and not just riparian mitigation measures, should be considered both for the Creek and for other tributaries to the Creek. Such measures could include removal of logjams that threaten channel stability, bank grading and stabilization, grade control measures, meander restoration on otherwise straightened reaches, and removal of low water crossings, including undersized culverts, that serve as obstructions to the passage of aquatic organisms.

In summary of the stream impacts, we recommend that the final EIS (e.g., Recommended Plan, page 83) be specific in the measures that will be taken to mitigate the loss of the expected 29 miles of streams. Such mitigation options should include in-channel and riparian measures, and the geographic area of interest should be the East Locust Creek watershed. All anticipated mitigation costs should be incorporated early into project costs.